

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

PROPPANT SPECIALISTS, LLC

Employer

and

Case 30-RC-6783

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 139, AFL-CIO**

Petitioner

**NOTICE OF HEARING ON EMPLOYER'S OBJECTIONS TO CONDUCT
AFFECTING THE RESULTS OF THE ELECTION AND CHALLENGED BALLOTS**

Pursuant to a petition filed on April 28, 2011 and in accordance with the Stipulated Election Agreement approved by the undersigned on May 9, 2011, an election was conducted on June 9, 2011 among employees in the following unit:

All full-time and regular part-time equipment operators, lab techs, and mechanics employed by the Employer at its Tomah, Wisconsin facility; excluding all managerial employees, office clericals, guards, and supervisors as defined in the Act.

The results of the election, as set forth in the tally of ballots served on the parties on the day of the election, show that of approximately 19 eligible voters, 8 cast ballots for, and 7 cast ballots against the Petitioner. There were four challenged ballots, which are sufficient to affect the results of the election.

On June 16, 2011 the Employer filed timely objections, a copy of which was served on the Petitioner by regular mail, and a copy of which is attached as Exhibit A.

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has investigated the issues raised by the objections and challenges and reports as follows:

Bd Exh

1(a)

THE EMPLOYER'S OBJECTIONS

Objection 1

The Employer contends a statutory supervisor, Barrett Oliver, coerced eligible voters into supporting Petitioner and/or interfered with eligible voters' freedom of choice by engaging, as described more fully in the objections, in various activities in support of Petitioner, threatening voters' job security, and serving as Petitioner's election observer. The Petitioner denies any objectionable conduct occurred and further denies that Oliver is a statutory supervisor as defined by the Act.

Objection 2

The Employer contends that Petitioner coerced eligible voters and otherwise destroyed the "laboratory conditions" necessary for a fair election by electioneering in the voting area by having a statutory supervisor, Oliver, wear insignia of Petitioner while acting as the Petitioner's observer. The Petitioner denies any objectionable conduct occurred and further denies that Oliver is a statutory supervisor as defined by the Act.

Objection 3

The Employer contends that Petitioner coerced eligible voters and otherwise destroyed the "laboratory conditions" necessary for a fair election by, during the voting period, electioneering in the voting area and creating the impression of surveillance in the voting area by displaying large yard signs supporting Petitioner at a private residence directly across the street from the polling place. The Petitioner denies any objectionable conduct occurred.¹

¹ In the Employer's position statement dated June 22, 2011, it asserts, seemingly with respect to its third objection, that agents of Petitioner created the impression of surveillance by "milling about" between the 24-hour speech and the election. The Petitioner contends that, because the Employer did not raise this allegation in its objections, the

DISCUSSION

A review of the objections indicates that they are attended by substantial questions of fact and credibility which can best be resolved by a hearing. I, therefore, will direct a hearing on the objections. The Hearing Officer, of course, retains the authority, upon hearing the positions of the parties and the nature of the evidence to be proffered, to receive evidence only as to those objections which appear to involve conduct which could have tended to affect the results of the election.

THE CHALLENGES

Challenge of Barrett Oliver

The Employer challenged the ballot of Barrett Oliver, contending Oliver is a statutory supervisor under the Act. The Petitioner contends Oliver is not a statutory supervisor as defined by the Act.

Challenge of Todd Rainey

The Petitioner challenged the ballot of Todd Rainey, contending Todd Rainey is a statutory supervisor under the Act. The Employer contends Todd Rainey is not a statutory supervisor as defined by the Act.

Challenge of Ralea Rainey

The Petitioner challenged the ballot of Ralea Rainey, contending Ralea Rainey is an office clerical or professional employee and thus specifically excluded from the bargaining unit. The Employer contends that Ralea Rainey is a plant clerical employee and appropriately included in the bargaining unit.

objection has been waived, and it should not be considered by the Hearing Officer. I will permit the Hearing Officer to receive and consider this evidence only to the extent it pertains to the allegations included in Objection 3.

DISCUSSION

Preliminary investigation of the aforementioned challenged ballots indicates the facts and circumstances are attended by substantial questions of fact and credibility which can best be resolved by a hearing. I, therefore, will direct a hearing on the aforementioned challenged ballots.²

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Section 9 of the Act, as amended, on **August 30, 2011**, and consecutive days thereafter if necessary, at 9:00 a.m. in the **City Hall Council Chambers, Second Floor, 819 Superior Avenue, Tomah, Wisconsin**, a hearing will be conducted before a duly designated Hearing Officer of the National Labor Relations Board to resolve the issues raised by the objections and challenges. The Hearing Officer shall determine at the close of the hearing if briefs will be accepted and set the due date for receipt of briefs.

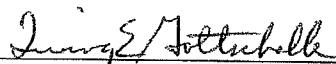
The Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of all issues.

Exceptions, if any, to the Hearing Officer's Report shall be filed with the Board in Washington,

² The Board Agent conducting the election challenged the ballot of Burdette Billings, as Billings was not listed on the *Excelsior* list provided to the Region by the Employer in advance of the election. On May 18, 2011, Billings filed an unfair labor practice charge against the Employer in case 30-CA-18986 alleging he was discriminatorily terminated because of his union and/or protected concerted activities. In a footnote in its position statement dated June 22, 2011, Petitioner stated that if the Region dismisses Billings' (mistakenly referred to as Harold Burdett) charge, his ballot should not be counted. Billings filed a contemporaneous charge with the Mine Safety and Health Administration (MSHA) alleging discriminatory termination. On July 20, 2011, based on her conclusion that Billings' charge was not frivolously brought, the Solicitor of Labor filed a petition for temporary reinstatement of Billings with the Federal Mine Safety and Health Review Commission Office of Administrative Law Judges. In light of this action, the Region has decided to hold Billings' unfair labor practice charge against the Employer in abeyance. Accordingly, the Hearing Officer is directed to not consider evidence on the subject of Billings' challenged ballot.

D.C. in accordance with Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

Signed at Milwaukee, Wisconsin on August 17, 2011.



Irving E. Gottschalk, Regional Director
National Labor Relations Board
Thirtieth Region
310 West Wisconsin Avenue, Suite 700W
Milwaukee, Wisconsin 53203

Form NLRB-4338 enclosed.

2-8
CASE NO. 20RC6783
NO. OF 2 DATE 8/21/11 CAL

PROPPANT SPECIALIST, LLC POSITION DESCRIPTION

Position Title: SAND PLANT OPERATOR
Location: PROPPANT
FLSA Class: NONEXEMPT
Responsible to: PRODUCTION MANAGER

Position Summary: Tends equipment that separates sand according to texture and grade: Presses buttons or flips switches on control panel to start conveyors, washing, and separating (classifying) units. Adjusts controls of classifying tanks to obtain specified grade of sand. Observes color of sand to determine clay content and notifies supervisor when excess clay or equipment malfunction is detected. Lubricates conveyor idlers, using grease gun, and assists in routine equipment maintenance. Shovels sand spillage clear of moving equipment parts and work area.

Essential Duties and Responsibilities:

- Operates or tends machines and equipment that crush, grind, polish, or blend materials.
- Moves controls to start, stop, or adjust machinery and equipment that crushes, grinds, polishes, or blends materials.
- Observes production monitoring equipment to ensure safety and efficient operation.
- Loads materials into machinery and equipment, using hand tools.
- Adds or mixes chemicals and ingredients for processing, using hand tools, or other devices.
- Dislodges and clears jammed materials, or other items, from machinery and equipment, using hand tools.
- Tends accessory equipment, such as pumps and conveyors, to move materials or ingredients through production process.
- Weighs or measures materials, ingredients, and products to ensure conformance to requirements.
- Reads work orders to ascertain production specifications and information.
- Examines or feel materials, ingredients, or products to ensure conformance to established standards.
- Collects samples of materials or products for laboratory testing.
- Cleans and maintains machinery, equipment, materials, and products, using hand tools.
- Tests samples of materials or products to ensure compliance with specifications, using test equipment.
- Transfers materials, supplies, and products between work areas, using moving equipment and hand tools.
- Records operational and production data on specified forms.
- Must be willing to work in adverse weather conditions.
- Must be willing and able to shovel sand when needed.
- Must be self starter, willing and able to work independently, seeking other work opportunities within the company including those outside of hired position when personal assignments are complete.
- Performs other related duties as required.

12/15/2008

ER S.1

Educational and Other Requirements:

- Vocational training or job-related course work is preferred.
- Previous work-related skill, knowledge, or experience is preferred.
- Knowledge of machinery, equipment, lubrication, and cleaning of tools preferred.
- Knowledge and skills used to help others required.

Mental and Physical Requirements:

- Able to read, speak and write English.
- Strong physical and mental health to maintain demanding workload.
- Able to work under stressful conditions at times.
- Communication – verbal and written communication.
- Climbing - able to go up and down stairs.
- Bending/Stooping, twisting, lifting.
- Gripping, reaching, handling tools.
- Position will require a minimum of 40 hours per week dependent on workload.
- Dependable, reliable, fulfills responsibilities.
- Strong work ethics of integrity and honesty strives for excellence in all activities employing accompanying communication.
- Develops constructive and cooperative working relationships and maintaining them over time.
- Dependable, reliable, fulfills responsibilities.

The above statements are intended to describe the general nature and level of work being performed by employees assigned to this classification. They are not to be construed as an exhaustive list of all responsibilities, duties, and skills required of personnel so classified. All personnel may be required to perform duties outside of their normal responsibilities from time to time, as needed.

I acknowledge that I have read and understand this position description and have had the opportunity to ask my supervisor about any points I did not understand. I hereby state that I can perform the essential functions of this position with or without reasonable accommodation.

Bales Biney
EMPLOYEE SIGNATURE

JLR
MANAGER SIGNATURE

2-7-11
DATE

2-7-11
DATE

12/15/2008

ER 8, 2

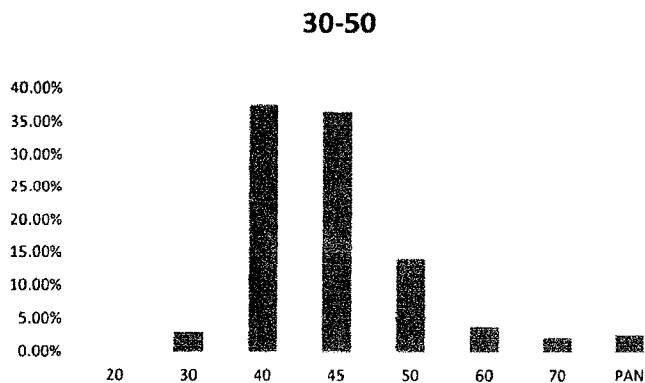
EXHIBIT 77
C-9 rec'd ✓
CASE 30RC6783
NO. 01 2
9/1/11
Preppant

ROPPANT
SPECIALISTS

Northern White		
30/50		
04-02-2011		
1858		
Start weight 100.9		
Sieve	Gram	%Total
20	0	0.00%
30	3	2.98%
40	37.9	37.64%
45	36.8	36.54%
50	14.2	14.10%
60	3.9	3.87%
70	2.2	2.18%
PAN	2.7	2.68%

Total **100.7** **100.00%**
Turbidity **69** **88.28%**
Tested By **Sandy**

Sent per Barrett



ER 9.1

**PROPPANT
SPECIALISTS**

12491 Franklin Road
Tomah, WI 54660
608-374-4942

WEIGHT TICKET # / 858

Ship To: Tomah
Bill To: _____
Date: 4-2-11
P.O. #: _____
Product: 30/50
Railcar ID/Number: _____
Truck # & Company: Vestey
Truck Driver Signature: [Signature]
Load by: LA
Received @ Rail by: _____
Truck ID: 804
Product ID: _____

Total Tons: _____

Signature: _____

WHITE - Trucking Company CANARY - Driver PINK - Rail GOLD - Loadout

Truck # 804

*Loadout
Pink
Gold*

Weight 30/50
4/2/11 14/02/11
Operator E 025
10000
Truck # 804 0150
Stake to TR00000
Truck to TR00000
4000 to TR00000

ER 9,2

2-10
EXHIBIT NO. 2-10
CASE NO. 30 RC 6783
NO. OF PAGES 1
DATE 9/1/14
RECEIVED
PROPPANT
CW

THE COMMUNITY
SUPPORTS LOCAL
YES

Area
to be added

(U.S.)
3066183
1 lb
8/15/11
Preppant
C.A.

20

Un. Ex. 56

Area	Hrs	Person	Person
Lab/loadout	12	BECKY	DUANE
Lab/loadout	12	TIFFENY	
Dry Plant -Operator	12	MATT	MICHAEL
Dry Plant -Utility	12		LARRY
Dry Plant-Loader	12	ETHAN	MARK
Wet Plant-Operator	12	ZACH	KAYNE
Wet Plant -Utility	12		
Wet Plant -Loader	12	TRAVIS	BOB
Maintenance	12		
Maintenance	12		
Production Supervisor	12		

Area	hrs	Area	hrs
Lab/loadout	12	TIFFENY	JEN
Lab/loadout	12		
Dry Plant - Operator	12	BOBBY	
Dry Plant - Utility	12	KEN	
Dry Plant-Loader	12	TODD G.	MARK
Wet Plant-Operator	12	ZACH	JEFF
Wet Plant - Utility	12		
Wet Plant-Loader	12	TRAVIS	KAYNE
Maintenance	12		
Maintenance	12		
Production Supervisor	12		

Saturday June 18th

Lab/loadout	12	DUANE	SANDY
Lab/loadout	12		
Dry Plant - Operator	12	MATT	BOBBY
Dry Plant- Utility	12		KEN
Dry Plant-Loader	12	TODD G.	MARK
Wet Plant-Operator	12	TRAVIS	CHARLES
Wet Plant- Utility	12		
Wet Plant- Loader	12	ETHAN	JEFF
Maintenance	12		
Maintenance	12		
Production Supervisor	12		

Saturday June 25th

Lab/loadout	12	JEN	SANDY
Lab/loadout	12		
Dry Plant - Operator	12	JON	BOBBY
Dry Plant- Utility	12		KEN
Dry Plant-Loader	12	MATT	MARK
Wet Plant-Operator	12	TRAVIS	CHARLES
Wet Plant- Utility	12		
Wet Plant- Loader	12	ETHAN	JEFF
Maintenance	12		
Maintenance	12		
Production Supervisor	12		

Saturday July 2nd

Lab/loadout	12	DUANE	SANDY
Lab/loadout	12		
Dry Plant -Operator	12	JON	MICHAEL
Dry Plant- Utility	12		LARRY
Dry Plant- Loader	12	ETHAN	MARK
Wet Plant-Operator	12	TRAVIS	CHARLES
Wet Plant- Utility	12		
Wet Plant- Loader	12	MATT	JEFF
Maintenance	12		
Maintenance	12		
Production Supervisor	12		

EXHIBIT NO. 66-57 ☒ RECEIVED ☐ REJECTED
CASE NO. 2084158 NAME Proppant
NO. OF PAGES 14 DUES 83111 RECEIVED CA

Weekly Schedule April 17th-23rd

Sunday April 17th			Monday April 18th			Tuesday April 19th			Wednesday April 20th		
Area	AM-PM	Hrs	Area	AM-PM	Hrs	Area	AM-PM	Hrs	Area	AM-PM	Hrs
Lab/loadout	12 Ralea	12	Lab/loadout	12 Becky	12	Lab/loadout	12 Duane	12	Lab/loadout	12 Becky	12
Lab/loadout	12 Jennifer	12	Lab/loadout	12 Jennifer	12	Lab/loadout	12	12	Lab/loadout	12 Tiffany	12
Dry Plant-Operator	12 Matt	12	Dry Plant-Operator	12 Ethan	12	Dry Plant-Operator	12 Travis	12	Dry Plant-Operator	12 Matt	12
Dry Plant-Utility	12 Ethan	12	Dry Plant-Utility	12	12	Dry Plant-Utility	12 Michael	12	Dry Plant-Utility	12 Ethan	12
Dry Plant-Loader	12 Todd G.	12	Dry Plant-Loader	12 Chris	12	Dry Plant-Loader	12 Bart	12	Dry Plant-Loader	12 Todd G.	12
Wet Plant-Operator	12 Chris	12	Wet Plant-Operator	12	12	Wet Plant-Operator	12 Barrett	12	Wet Plant-Operator	12 Bob	12
Wet Plant-Utility	12 Marty	12	Wet Plant-Utility	12 Marty	12	Wet Plant-Utility	12	12	Wet Plant-Utility	12 Jeff	12
Wet Plant-Loader	12 Bob	12	Wet Plant-Loader	12 Bob	12	Wet Plant-Loader	12	12	Wet Plant-Loader	12 Kayne	12
Maintenance	12	12	Maintenance	12	12	Maintenance	12	12	Maintenance	12	12
Maintenance	12	12	Maintenance	12	12	Maintenance	12	12	Maintenance	12	12
Production Supervisor	12 Todd R.	12	Production Supervisor	12 Todd R.	12	Production Supervisor	12 Barrett O.	12	Production Supervisor	12 Todd R.	12
Barrett O.			Barrett O.			Barrett O.			Barrett O.		

Thursday April 21st			Friday April 22nd		
Area	Hrs	AM-PM	Area	Hrs	AM-PM
Lab/loadout	12	Becky	Lab/loadout	12	Becky
Lab/loadout	12	Tiffany/Cole	Lab/loadout	12	Tiffany
Dry Plant-Operator	12	Matt/John	Dry Plant-Operator	12	John
Dry Plant-Utility	12	Kayne/Thomas	Dry Plant-Utility	12	Matt
Dry Plant-Loader	12	Todd G.	Dry Plant-Loader	12	Kayne
Wet Plant-Operator	12	Chance	Wet Plant-Operator	12	Chance
Wet Plant-Utility	12	Zack/Rich	Wet Plant-Utility	12	Zack
Wet Plant-Loader	12	Bob	Wet Plant-Loader	12	Bob
Maintenance	12		Maintenance	12	
Maintenance	12		Maintenance	12	
Production Supervisor	12	Barrett O.	Production Supervisor	12	Barrett O.

Saturday April 23rd			
Area	Hrs	AM-PM	PM-AM
Lab/loadout	12	Tiffany	Duane
Lab/loadout	12	Jennifer	
Dry Plant-Operator	12	John	Bobby
Dry Plant-Utility	12	Matt	Ethan
Dry Plant-Loader	12	Todd G.	Mark
Wet Plant-Operator	12	Bob	Jeff
Wet Plant-Utility	12		
Wet Plant-Loader	12	Bart	Travis
Maintenance	12		
Maintenance	12		
Production Supervisor	12		

Un Dx 57

CONFIDENTIAL

EXHIBIT NO. U58 RECEIVED ☒ RECEIVED
CASE NO. 20R67K3 PROPERTY PROPERTY
NO. OF PAGES 1 DATE 8/13/14 BY KA

Sunday 24th				Monday April 25th			
Area	Hrs	AM-PM	PM-AM	Area	Hrs	AM-PM	PM-AM
Lab/loadout	12	Jennifer	Duane	Lab/loadout	12	Jennifer	Duane
Lab/loadout	12	Tiffeny		Lab/loadout	12	Tiffeny-1/2 day	Cole
Dry Plant -Operator	12	John	Michael	Dry Plant -Operator	12	Chris	Michael
Dry Plant- Utility	12	Thomas	Larry	Dry Plant- Utility	12	Thomas	Larry
Dry Plant-Loader	12	Todd G.	Ethan	Dry Plant-Loader	12	Matt	Todd G.
Wet Plant-Operator	12	Chance	Kayne	Wet Plant-Operator	12	Chance	Kayne
Wet Plant- Utility	12	Zakk	Charles	Wet Plant- Utility	12	Zakk	Charles
Wet Plant- Loader	12	Bart	Travis	Wet Plant- Loader	12	Bart	
Maintenance	12			Maintenance	12	Harry	
Maintenance	12			Maintenance	12		
Production Supervisor	12	Todd R.	Barrett O.	Production Supervisor	12	Todd R.	Barrett O.

Tuesday April 26th				Wednesday April 27th			
Area	Hrs	AM-PM	PM-AM	Area	Hrs	AM-PM	PM-AM
Lab/loadout	12	Jennifer	Duane	Lab/loadout	12	Becky	Sandy
Lab/loadout	12	Becky	Cole	Lab/loadout	12	Tiffeny	Cole
Dry Plant -Operator	12	Chris	Michael	Dry Plant -Operator	12	Chris	Michael
Dry Plant- Utility	12	Thomas	Larry	Dry Plant- Utility	12		Larry
Dry Plant-Loader	12	Matt	Todd G.	Dry Plant-Loader	12	Matt	Todd G.
Wet Plant-Operator	12	Chance	Kayne	Wet Plant-Operator	12	Chance	Jeff
Wet Plant- Utility	12	Zakk	Charles	Wet Plant- Utility	12	Zakk/Rich	Charles
Wet Plant- Loader	12	Bart		Wet Plant- Loader	12	Bob	Mark
Maintenance	12	Harry		Maintenance	12	Harry	
Maintenance	12			Maintenance	12		
Production Supervisor	12	Todd R.	Barrett O.	Production Supervisor	12	Todd R.	Barrett O.

Thursday April 28th				Friday April 29th			
Area	Hrs	AM-PM	PM-AM	Area	Hrs	AM-PM	PM-AM
Lab/loadout	12	Becky	Sandy	Lab/loadout	12	Becky	Sandy
Lab/loadout	12	Tiffeny	Cole	Lab/loadout	12	Jennifer	
Dry Plant -Operator	12	John	Bobby	Dry Plant -Operator	12	John	Bobby
Dry Plant- Utility	12	Chris	Ken	Dry Plant- Utility	12	Chris	Ken
Dry Plant-Loader	12	Matt	Todd G.	Dry Plant-Loader	12	Matt	Ethan
Wet Plant-Operator	12	Chance	Jeff	Wet Plant-Operator	12	Chance	Jeff
Wet Plant- Utility	12	Zakk/Rich		Wet Plant- Utility	12	Zakk/Rich	
Wet Plant- Loader	12	Bob	Mark	Wet Plant- Loader	12	Bob	Mark
Maintenance	12	Harry		Maintenance	12	Harry	
Maintenance	12			Maintenance	12		
Production Supervisor	12	Todd R.	Barrett O.	Production Supervisor	12	Todd R.	Barrett O.

Saturday April 30th			
Area	Hrs	AM-PM	PM-AM
Lab/loadout	12	Becky	Sandy
Lab/loadout	12	Tiffeny	
Dry Plant -Operator	12	John	Bobby
Dry Plant- Utility	12	Thomas	Ken
Dry Plant-Loader	12	Matt	Ethan
Wet Plant-Operator	12	Chris	Jeff
Wet Plant- Utility	12	Rich	Kayne
Wet Plant- Loader	12	Bob	Mark
Maintenance	12		
Maintenance	12		
Production Supervisor	12	Todd R.	Barrett O.

UN Ex. 58